

1 JODI LINKER
2 Federal Public Defender
3 Northern District of California
ELISSE LAROUCHE
4 Assistant Federal Public Defender
19th Floor Federal Building - Box 36106
450 Golden Gate Avenue
5 San Francisco, CA 94102
Telephone: (415) 436-7700
Facsimile: (415) 436-7706
Email: Elisse_Larouche@fd.org

7
8 Counsel for Defendant Reyes Aleman
9
10

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 MAYCOL REYES ALEMAN,
18 Defendant.

Case No.: CR 2022-70740 LB

**OPPOSITION TO GOVERNMENT'S
MOTION FOR ORDER WAIVING TEN-
DAY NOTICE**

Court: Courtroom C, 15th Floor
Hearing Date: June 8, 2022
Hearing Time: 10:30 a.m.

20 The defendant, Maycol Reyes Aleman, opposes the government's motion for an order waiving
21 the ten-day notice requirement of 18 U.S.C. § 2518(9) for the defendant's bail hearing on
22 Wednesday, June 8, 2022. The Court should deny the motion because the defendant would be
23 prejudiced having only received the wiretap application and wiretap line sheets on the evening of
24 Monday, June 6, 2022.

25 Section U.S.C. § 2518(9) sets out that “[t]he contents of any wire, oral, or electronic
26 communication intercepted . . . shall not be received in evidence or otherwise disclosed in any trial,
27 hearing, or other proceeding in a Federal or State court, *unless* each party, *not less than ten days*
before the trial, hearing, or proceeding has been furnished with a copy of the court order, and

1 accompanying application, under which the interception was authorized or approved.” (emphasis
 2 added). Here, the government provided defense counsel with the court order and application not even
 3 two days prior to the bail hearing. This does not comply with the default rule of ten days’ notice.

4 The exception to the general rule of ten days’ notice prior to disclosure only applies if the judge
 5 finds: 1) that it was not possible to furnish the party with the above information before the hearing;
 6 and 2) that the party will not be prejudiced by the delay in receiving such information. The second
 7 requirement is not met. The government seeks to introduce damaging wire intercept evidence against
 8 Mr. Reyes Aleman in its effort to ensure he remains detained. Having just received the wiretap
 9 application and court order less than 48 hours before the hearing, the defense does not have adequate
 10 time to research, investigate, determine whether there any infirmities with the application, or
 11 otherwise mount an argument against the introduction of the wiretap evidence. A less than two-day
 12 preparation time, in contrast to the ten days outlined by statute, impacts the most important of Mr.
 13 Reyes Aleman’s interests – his liberty. Further, there do not appear to be any extraordinary
 14 circumstances warranting disclosure of the wiretap information at the bail hearing. The Court is
 15 already aware of various wire intercept information, which was included in the complaint. The
 16 government will also likely rely on information from law enforcement and evidence seized during the
 17 search and arrest to make its argument for detention. This information will give the Court a full
 18 picture of the information it needs to consider the nature and circumstances of the charged offense,
 19 weight of the evidence, and nature and seriousness of the danger to the community. If the government
 20 could merely assert its desire to give the Court a fuller picture of all of a defendant’s offense conduct
 21 in order to circumvent the notice requirement of 18 U.S.C. § 2518(9) at a bail hearing, it would
 22 eviscerate any real teeth of the provision and its requirement for ten days’ notice before a hearing.

23 As to the first requirement of the exception to notice, while the government could not have
 24 produced the wiretap court order and application ten days prior to the scheduled bail hearing on June
 25 8 given the defendant’s initial appearance on June 3, it certainly could have provided it sooner than
 26 June 6 if it intended to use the wiretap information at the bail hearing. The government has had these
 27 wiretaps and just as they were prepared to charge and arrest Mr. Reyes Aleman, they should have
 28 been prepared to notice and produce to the defense the wiretaps. Moreover, the defendant has a

1 constitutional right to a prompt bail hearing and a right to hearing within three days per 18 U.S.C.
 2 § 3142(f). That the government wants to make a stronger case against Mr. Reyes Aleman at his bail
 3 hearing does not take precedence over his important right to seek bail.

4 Finally, none of the cases cited by the government are persuasive, binding authority and they
 5 are also distinguishable. *See United States v. Valenzuela*, No. 10CR3044 WQH, 2010 WL 3584530,
 6 at *3 (S.D. Cal. Sept. 8, 2010) (district court denied defendant's motion to suppress wiretap evidence
 7 at bail hearing finding, in a footnote, no prejudice to defendant and that the court would have
 8 continued the bail hearing for ten days in any event); *United States v. Tortora*, 922 F.2d 880, 886 (1st
 9 Cir. 1990) (this out-of-circuit case does not reference 18 U.S.C. § 2518(9) and thus does not address
 10 the notice exception requirements); *United States v. Berrios-Berrios*, 791 F.2d 246, 253 (2d Cir.
 11 1986) (determining, under an abuse of discretion standard, that the district court did not err in
 12 admitting results of electronic surveillance because most of the materials were previously disclosed in
 13 a state court hearing and the defense team had an opportunity to review the documents and because
 14 the judge had a colloquy in which the court determined there was no prejudice to the defense).

15 In sum, the Court should find that the two requirements for the exception to notice in 18 U.S.C.
 16 § 2518(9) are not met because the lack of timely notice prejudices Mr. Reyes Aleman's ability to be
 17 fully prepared in a hearing affecting his important liberty interests. The government's suggestion that
 18 there is no prejudice because Mr. Reyes Aleman can later litigate the sufficiency of the wiretap at
 19 trial or reopen bond does not acknowledge that every additional day in custody is prejudicial to him.
 20 Accordingly, the Court should not permit the government to disclose wire intercept information at the
 21 bail hearing.

22
 23 Dated: June 7, 2022

Respectfully submitted,

24
 25 JODI LINKER
 Federal Public Defender
 Northern District of California

26
 27 /S
 ELISSE LAROUCHE
 Assistant Federal Public Defender